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UNCLAS SECTION 01 OF 03 TEGUCIGALPA 000417

SIPDIS

SENSITIVE

DEPT FOR EB/IPE SWILSON
DEPT PLS PASS TO USTR JCHOE-GROVES
DEPT PLS PASS TO DOC JBOGER
DEPT PLS PASS TO USPTO JURBAN
DEPT PLS PASS TO LOC STEPP

E.O. 12958: N/A

TAGS: [KIPR](#) [ECON](#) [ETRD](#) [HO](#)

SUBJECT: HONDURAS: INPUT FOR 2005 SPECIAL 301 REVIEW

REF: STATE 24592

1. (SBU) Summary and Comment: There have been no significant moves in the past year by the GOH to either strengthen or weaken the protection of Intellectual Property Rights (IPR) in Honduras. Honduran legislation regarding IPR is largely in compliance with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs). However, Honduran authorities have failed to dedicate the personnel and resources necessary to wage a truly effective campaign against copyright or other IPR violations. While the current level of enforcement is disappointing, moves to increase the staffing of the IPR prosecutor's office, as well as legal changes which will come into effect with the ratification of CAFTA-DR, should enable the GOH to increase its enforcement efforts in the year to come. Embassy therefore recommends that Honduras remain off the Special 301 watch list for 2005. End Summary and Comment.

2. (U) The responses below are keyed to paragraph 16 of reftel.

A) Optical Media Piracy (CDs, VCDs, DVDs)

3. (U) The sale of pirated CDs, DVDs, and computer software in Honduras is widespread and goes largely unpunished. GOH officials report that some pirating of optical media is suspected to be taking place in Honduras, in the northern city of San Pedro Sula. GOH officials believe that most pirated goods are imported from China via other countries in the region, such as Panama. Confiscation of counterfeit media, which in the past involved sporadic seizures of pirated compact discs and DVDs, has ceased entirely in recent years (see paragraph 9 on enforcement, below). Under CAFTA, the GOH prosecutor for IPR will gain ex officio powers, significantly enhancing that office's ability to conduct raids and seizures. Success in controlling optical piracy will then rest primarily on the GOH's will to effectively implement its current laws, rather than a need for further legislation.

B) Use/Procurement of Government Software

4. (U) More government ministries and agencies are using legally licensed software in recent years, largely due to private sector efforts to persuade government entities to obtain legal licenses to the software that they were already using. However, several government agencies continue to use illegally-procured software, or to use multiple copies based on a single legal purchase. U.S. software companies intend to work with Honduran authorities to further reduce the number of non-compliant ministries in months ahead. The Public Ministry (which prosecutes IPR crimes) is not involved in investigation or prosecution of improper government use of software, as no software company has brought a formal complaint against the GOH for use of unlicensed software.

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C) TRIPs Compliance and Other IP-Related Issues
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5. (U) No new TRIPs-related legislation was introduced or passed by the Honduran Congress in 2004, nor were any amendments to existing legislation introduced or passed.

6. (U) Honduras largely complied with the TRIPs agreement by the required January 2000 deadline, by passing, in late 1999, two laws to correct deficiencies in previous legislation concerning copyrights, patents and trademarks. The Copyright Law added more than 20 different criminal offenses related to copyright infringement and establishes fines and suspension of services that can be levied against offenders. The Law of Industrial Property, Decree 12-99E, covers both trademarks and patents, and includes modifications on patent protection for pharmaceuticals, extending the term from seventeen to twenty years to meet international standards. The term for cancellation of a trademark for lack of use was extended from one year to three years. To be protected under Honduran law, patents and trademarks must be registered with the Ministry of Industry and

Trade. Post has been made aware of several instances of this Ministry registering multiple holders for the same trademark (see paragraph 11 on enforcement, below). As of this writing, U.S. firms are currently involved in a number of lawsuits seeking to defend their trademark rights following such errors in the Ministry.

17. (U) Honduras will be in complete compliance with the TRIPS agreement once it ratifies or accedes to two remaining conventions: the International Convention for the Protection of New Varieties of Plants (UPOV Convention) and the Washington Treaty on Intellectual Property in Respect of Integrated Circuits. Under CAFTA-DR, Honduras has committed to ratify or accede to the UPOV Convention by January 1, 2006, or to provide effective patent protection for plants by the time CAFTA-DR enters into force. CAFTA-DR does not specifically address the Treaty on Integrated Circuits.

18. (U) Honduras became a member of the World Intellectual Property Organization (WIPO) in 1983, ratified the Paris Convention for the Protection of Industrial Property in 1994, and became party to both the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty in 2002. Honduras and the U.S. initialed a Bilateral IPR Agreement in March 1999, but substantive issues arose during the language conformity process, and subsequent efforts to push the GOH for additional IPR commitments were pursued as part of the CAFTA-DR negotiations. The Honduran Congress is expected to ratify CAFTA-DR in the first half of 2005.

D) Enforcement

19. (U) A reform of the Criminal Procedures Code in 2002 changed the criminal judicial system from a traditional written inquisitorial trial system to an adversarial, oral, and public trial system. As a result of this change, Honduran officials lost the legal authority to seize pirated goods ex officio, that is, without first receiving a complaint from an injured party. Consequently, confiscation and seizure of pirated goods, which had been at best erratic prior to the legal change, have since ceased entirely, as no companies whose rights have been infringed have come forth to file a formal complaint. CAFTA-DR, when ratified, will correct this deficiency in Honduran law, as it requires each signatory to provide that its authorities may, at least in cases of suspected trademark counterfeiting or copyright piracy, conduct investigations or exercise other enforcement measures ex officio, without the need for a formal complaint by a private party or right holder.

110. (U) Responsibility for prosecuting IPR crimes lies with the Public Ministry, under the direction of the Attorney General. Currently, there is only one prosecutor assigned, part-time, to IPR crimes. Some U.S. companies have expressed concern that, as a result of this low level of staffing, attempts to prosecute computer software infringement cases face significant delays. In early 2005, the Prosecutor for General Crimes (who oversees the IPR prosecutor) reported to EmbOffs that the IPR prosecutor will soon be moved to IPR crimes full-time, effectively doubling the prosecutorial manpower devoted to IPR crimes. If carried out, this would be a positive change and should lead to a notable increase in the number of IPR cases prosecuted in Honduras.

111. (U) Success in securing convictions would then depend on the willingness and capacity of the judiciary to hear and effectively adjudicate IPR cases. However, the Honduran legal system is not efficient or transparent: many U.S. claimants (in cases unrelated to IPR) frequently complain about the lack of transparency and the slow administration of justice in the courts. There are also complaints that the Honduran judicial system caters to favoritism, external pressure, and bribes.

112. (U) The Intellectual Property Division of the Ministry of Industry and Trade is responsible for the registration of trademarks in Honduras. On two different occasions in 2004, the Embassy received complaints from U.S. companies that a trademark that had been previously awarded to a U.S. company was subsequently also awarded to another company. (The Embassy is also aware of Honduran companies that claim to have suffered the same injustice; the practice does not seem to be targeted at U.S. firms.) The companies involved suspect that corruption, not mere incompetence, is to blame.

113. (U) The Intellectual Property Division of the Ministry of Industry and Trade is also responsible for handling administrative complaints regarding satellite piracy, and the telecom regulatory agency, CONATEL, checks on compliance with anti-piracy rules before extending cable TV licenses. In 2003 and 2004, the Embassy received complaints from one U.S. company, arguing that the Ministry of Industry and Trade's IPR Division appeared to be singling out the U.S. company for investigations of satellite piracy, while ignoring alleged violations on the part of the U.S. company's Honduran rival. Embassy officials discussed the issue with appropriate Ministry and IPR officials, urging a strong and balanced approach to investigations of all

IPR violations.

14. (U) The Embassy received no complaints over GOH protection of data exclusivity during 2004, though such concerns have been raised by U.S. companies in the past. For example, in 2002, a U.S. pharmaceutical company complained that the Ministry of Health, in approving a competing company's pharmaceutical product, did not respect their data exclusivity rights as guaranteed under article 39 of the WTO TRIPs agreement and article 77 of Honduras' Industrial Property Law. (Honduran law provides five-year exclusive use of data provided in support of registering pharmaceutical products.) The Ministry of Health approved the competing pharmaceutical product despite communication from Honduras' IPR Division that the U.S. company's research and data were protected under Honduran law. The U.S. company argues that in order for the competing product to be legally registered with the Ministry of Health, the company needs to provide the research and data to support its application. When a similar situation arose with a separate application in 2003, the Ministry of Health recognized that the competing company's product was a copy of the U.S. company's protected product, and did not approve the competing company's application.

15. (U) The GOH Customs and Tax Authority (DEI) is responsible for impeding the flow of illegal goods into Honduras. However, IPR officials in the Public Ministry and the Ministry of Industry and Trade have reported that police and DEI officials lack the skills and resources to identify and control the flow of pirated products at the nation's borders.

16. (U) Capacity building: In 2004 and 2005, four GOH officials responsible for IPR enforcement participated in training given by the U.S. Patent and Trademark Office (USPTO). These officials included the legal advisor in the Ministry of Industry and Trade, the Deputy Director of the Intellectual Property Division of the Ministry of Industry and Trade, and from the Public Ministry, the prosecutor responsible for IPR crimes and the Prosecutor for General Crimes. All participants praised the training as being highly practical and very useful to their work.

Pierce